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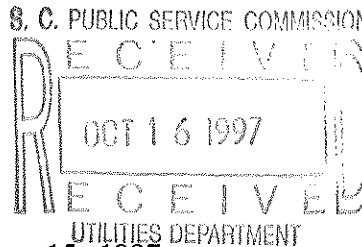
RICHARDSON, PLOWDEN, CARPENTER & ROBINSON, P.A.
ATTORNEYS AND COUNSELORS AT LAW

DONALD V. RICHARDSON III
CHARLES E. CARPENTER, JR.*
FRANK E. ROBINSON II
MICHAEL A. PULLIAM
GEORGE C. BEIGHLEY
FREDERICK A. CRAWFORD
FRANCIS M. MACK, P.E.
FRANKLIN J. SMITH, JR.
LESLIE A. COTTER, JR.
STEVEN W. HAMM
DOUGLAS C. BAXTER **
NINA REID MACK
S. NELSON WESTON, JR.

MARY SOWELL LEAGUE
MARIAN WILLIAMS SCALISE
WILLIAM C. McDOW
GEORGIA ANNA MITCHELL
SHARON S. WILLIAMS **
RONALD B. DIEGEL
DAVID C. SLOUGH
STEPHEN C. LENKER, JR.
S. ELIZABETH BROSNAN
DAVID A. ANDERSON

OF COUNSEL
CHARLES N. PLOWDEN, JR.

* ALSO MEMBER VIRGINIA BAR
** ALSO MEMBER GEORGIA BAR



October 15, 1997

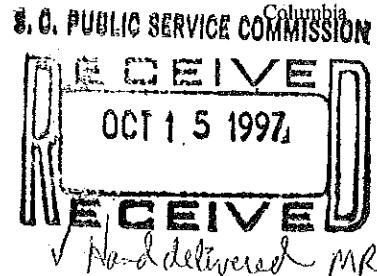
COLUMBIA OFFICES:
1600 MARION STREET
P.O. DRAWER 7788
COLUMBIA, SOUTH CAROLINA 29202
(803) 771-4400
FAX (803) 779-0016
OR (803) 799-7555
E MAIL: RPCR@BARRISTER.NET

MYRTLE BEACH OFFICES:
BBAT BUILDING, SUITE 202
601 21ST AVENUE NORTH
P.O. BOX 3646
MYRTLE BEACH, SOUTH CAROLINA 29578
(803) 448-1008
FAX (803) 448-1533

REPLY TO:

HAND-DELIVERED

The Honorable Charles W. Ballentine
Executive Director
Public Service Commission of South Carolina
111 Doctor's Circle
Columbia, South Carolina 29203



RE: Blue Ridge Electric Cooperative, Inc., vs. Duke Power Company, n/k/a Duke Power, a division of Duke Energy Corporation (Docket No.: 97-153-E)

Dear Mr. Ballentine:

Enclosed please find an original and ten (10) copies of the **Blue Ridge Response to Petition for Reconsideration and/or Rehearing** in the above-referenced case. Copies have been served on all parties listed on the attached Certificates of Service.

Sincerely,

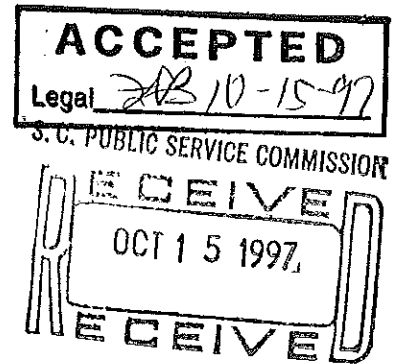
Steven W. Hamm
Steven W. Hamm
- MB

SWH:lbh
Enclosure

cc: The Honorable Gary E. Walsh
F. David Butler, Esquire
Richard L. Whitt, Esquire
Charles L. Compton

POSTED
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BEFORE THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO.: 97-153-E



Blue Ridge Electric Cooperative, Inc.)

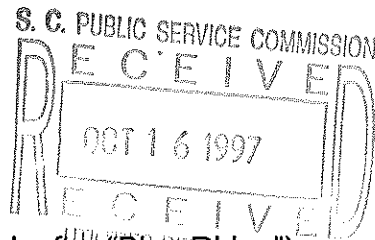
Petitioner,)

vs.)

Duke Power Company, n/k/a Duke Power,
a division of Duke Energy Corporation,)

Respondent.)

**BLUE RIDGE
RESPONSE TO PETITION
FOR RECONSIDERATION
AND/OR REHEARING**



Blue Ridge Electric Cooperative, Inc., (hereinafter "Blue Ridge")

respectfully responds to Duke Power Company's (hereinafter "Duke") petition to the Public Service Commission of South Carolina (hereinafter "Commission") for Reconsideration and/or Rehearing of its Order No. 97-819.

1. In Order No. 97-819, issued in Docket No. 97-153-E, on September 19, 1997, the Commission granted the relief requested in the Emergency Petition for Immediate Cease and Desist Order, for Duke to cease and desist from attempting to provide power to the Nason Corporation.

2. Duke has requested reconsideration of this Order, alleging certain factual errors and failure to address Duke's argument. Blue Ridge contends that the Commission fully addressed all arguments made by Duke, and that the findings in the Order are in accordance with South Carolina law and are supported by a preponderance of credible, reliable and substantive evidence.

RETURN DATE: _____
SERVICE: *ok*

3. The Commission did not err in finding that S.C. Code Ann. §58-27-610(3) and S.C. Code Ann. §58-27-620(1)(d)(iii) do not provide authority for Duke to serve the Nason premises.

The credible, reliable and substantive evidence in the record shows that Duke constructed the 44kv "Darby" line in 1969, which served no distribution customers. (Testimony of Mark Johnson). In fact, Duke states within its Petition that the "Darby" line was a transmission line. (Duke's Petition, p. 5 "...the original 44kv transmission line..."). The 44kv line currently in existence, the "Bear Swamp" line, was constructed in 1974. (Testimony of Mark Johnson, testimony of Barney Drake.) The Nason premises are not located wholly within 300' from either line. (Ex. A-I and A-II to Duke's Response to Blue Ridge's Petition). The "Darby" line was not a distribution line, and therefore conveyed no service rights within Blue Ridge assigned territory. The Bear Swamp line was constructed after July 1, 1969, and would therefore convey no corridor rights regardless of its function. Further, the Nason plant is not located wholly within 330' of either line, and S.C. Code Ann. §58-27-610(3) only extends corridor rights from distribution lines with respect to premises located wholly within 300' from such a line.

4. The Commission correctly interpreted the evidence in the record regarding construction of the 44kv "Darby" line, 100kv line, and 44kv "Bear Swamp" lines.

(a) The Commission correctly found that the 44kv "Bear Swamp" line was constructed in 1974.

The evidence at the hearing showed that the 44kv "Darby" transmission line which was constructed in 1969 was upgraded to a 100 kv transmission line in 1974, and that there has been no 44kv line on the original towers constructed in 1969 since that time. (Testimony of Mark Johnson, testimony of Barney Drake, affidavit and testimony of Edward Connell, Ex. A-I and A-II to Duke's Response to Blue Ridge's Petition) The evidence further showed that a second 44kv line, the "Bear Swamp" line, located on separate poles, was constructed in 1974. (Testimony of Mark Johnson, testimony of Barney Drake, affidavit and testimony of Edward Connell, Ex. A-I and A-II to Duke's Response to Blue Ridge's Petition). While there may have been wire strung continuously on the 1969 towers, it ceased carrying electricity at 44kv in 1974. The testimony clearly showed that a new 44kv "Bear Swamp" transmission line was constructed in 1974, is not the same line as the 44kv "Darby" transmission line, and was therefore not a mere renaming as Duke alleges.

(b) The Commission correctly found that the 44kv "Bear Swamp" line serves as a transmission tie line.

Duke's own witness, Mark Johnson, provided an affidavit to the Commission stating that the "Bear Swamp" line originally served as a transmission tie line from its construction in 1974 until it began serving the Steel Heddle plant in 1981. (Aff. of Mark Johnson, p. 2). The affidavit further stated that this line also currently serves as a back up transmission tie line to the Walhalla station. (Aff. of Mark Johnson, p. 2). Further, the photograph at Exhibit 2 to the Prefiled testimony of Barney Drake shows a Duke sign on the Duke pole

on the Walhalla side of the tap feeding Steel Heddle which states: "Bear Swamp Line, Walhalla Tie Side Steel Heddle Tap." The Commission's finding is supported by the evidence in the record.

5. The Commission did not err in finding that Duke would construct a new line to serve the Nason plant.

As Duke points out in its Petition, it was uncontroverted that it would not serve the Nason plant off of its existing 44kv "Bear Swamp" transmission line, but that it would be more economical to construct another line to serve the plant. Duke alleged in part that this 44kv line was a "distribution" line. As such, the character of this line as distribution or transmission was directly put at issue by Duke. That it would be uneconomical to serve a distribution customer off of a purported "distribution" line is directly relevant to the character of the line. Further, the Territorial Assignment Act was designed and enacted by the General Assembly to avoid exactly this type of wasteful duplication, and the issue above is directly relevant in the Commission's construction of the provisions of the Act.

6. The Commission correctly found that the 44kv line is a transmission line.

The reliable and substantive evidence in the record as set forth above was that the 44kv "Darby" line, constructed in 1969, never served any distribution customers. Further, the evidence showed that the 44kv "Bear Swamp" line constructed in 1974 did not serve any distribution customers until it began service to the Steel Heddle plant in 1981, pursuant to the 750 kw load

provisions. During the hearing, Duke's witnesses were unable to name any distribution customers originally served off of the 44kv "Bear Swamp" line. In fact, the testimony was that the Duke witness was unaware of any line built as a distribution line where no distribution customers were served off of the line for a period of 12 years. (Testimony of Mark Johnson). The evidence also showed that the 44kv "Darby" line and the 44kv "Bear Swamp" lines originally served as transmission tie lines to the Walhalla Tie Station, and that the 44kv "Bear Swamp" line still serves as a back-up transmission line. (Aff. Mark Johnson, p. 2). S.C. Code Ann. §58-27-610(3) and SCPSC Reg. 103.304 require that the Commission look to the primary purpose of the line at the time it was constructed to determine its character as transmission or distribution. The Commission finding was therefore clearly supported by the evidence.

7. The Commission's Order addresses all Duke claims, including corridor rights under S.C. Code §58-27-630 and the 1972 Order.

Duke alleged at the hearing that it has corridor rights pursuant to S.C. Code Ann. §58-27-610(3). The Commission did not err in addressing this argument and finding that Duke had no corridor rights as a result thereof.

8. The Commission was correct in finding that the 44kv "Darby" line no longer exists.

The evidence in the record as set forth above was that the 44kv "Darby" line was replaced by a 100 kv line. A second 44kv line, the "Bear Swamp" line, was constructed on poles separate from the poles on which the "Darby" line was placed. There was no testimony that the 44kv "Darby" line currently operates at

44kv on the towers constructed in 1969. The Commission's finding is supported by the reliable, probative and substantial evidence in the record.


9. The Commission did not disregard its 1972 Order, and was not barred from interpreting its own prior order.

Duke presented the argument to the Commission that the Commission in its 1972 Order left a 600' swath of unassigned territory in the middle of Blue Ridge assigned territory. It is uncontroverted that there is no evidence in the record that this was the agreement or intent of the parties. Further, Exhibit A to the 1972 Order, which is a map showing the areas of territorial assignment, do not show by markings or otherwise that this area is unassigned. In fact, Exhibit A shows the territory in this area as assigned to Blue Ridge. The 1972 Order was a form order used by the Commission state-wide in its adjudications pursuant to the Territorial Assignment Act. The language cited by Duke merely tracks the language of the Territorial Assignment act, and does not give Duke any rights or privileges beyond that within the Act. In fact, Duke's interpretation is in direct conflict with the provisions of the Act, which establishes in detail how areas within 300' from an electric supplier's lines may be serviced. Duke's contentions that the Commission intended or attempted to replace these provisions is not reasonable, nor is it supported by Exhibit A. The Commission is not prevented by res judicata, collateral estoppel, or estoppel by judgment from interpreting its own orders, nor was the Commission's decision in this matter made upon unlawful procedure.

CONCLUSION

It is therefore contended that the Commission did not err in its Order, and it is respectfully requested that Duke's Petition for Reconsideration or Rehearing be denied.

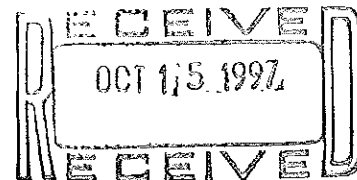
Respectfully submitted,



Steven W. Hamm, Esquire
Mary Sowell League, Esquire
Richardson, Plowden, Carpenter and
Robinson, P.A.
Post Office Drawer 7788
Columbia, South Carolina 29201
(803) 771-4400

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO.: 97-153-E

S. C. PUBLIC SERVICE COMMISSION



Blue Ridge Electric Cooperative, Inc.)
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vs.)
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Duke Power Company, n/k/a Duke Power,)
a division of Duke Energy Corporation,)
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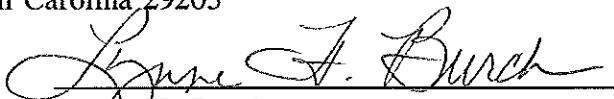
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CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson, Plowden, Carpenter & Robinson, P.A., do hereby certify that I have served the foregoing **Blue Ridge Response to Petition for Reconsideration and/or Rehearing**, by hand delivering a copy of the same to the following individuals:

The Honorable Gary E. Walsh
Deputy Executive Director
Public Service Commission of South Carolina
111 Doctor's Circle
Columbia, South Carolina 29203

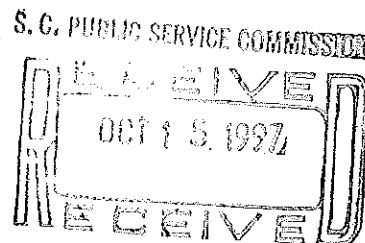
F. David Butler, Esquire
General Counsel
Public Service Commission of South Carolina
111 Doctor's Circle
Columbia, South Carolina 29203


Lynne H. Burch

October 15, 1997

Columbia, South Carolina

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO.: 97-153-E

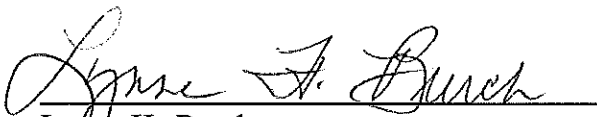


Blue Ridge Electric Cooperative, Inc.)
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 Petitioner,)
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 vs.)
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 Duke Power Company, n/k/a Duke Power,)
 a division of Duke Energy Corporation,)
)
 Respondent.)
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CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson, Plowden, Carpenter & Robinson, P.A., do hereby certify that I have served the foregoing **Blue Ridge Response to Petition for Reconsideration and/or Rehearing**, by placing a copy of the same in the United States mail, postage prepaid, addressed to the attorney(s) as indicated below:

William Frederick Austin
Richard Lee Whitt
AUSTIN, LEWIS & ROGERS, P.A.
Post Office Box 11716
Columbia, South Carolina 29211


Lynne H. Burch

October 15, 1997

Columbia, South Carolina